IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RPFC.No. 201 of 2007()

MC.234/2005 of FAMILY COURT, THIRUVALLA
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REVISION PETITIONER/RESPONDENTS

SATHEESAN K.R., S/O.RAGHAVAN,
KIZHAKKEKARA VEEDU, MELUKKARA,
KOZHENCHERRY P.O., KOZHENCHERRY TALUK,
KOZHENCHERRY VILLAGE, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

RESPONDENTS: PETITIONERS
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1. USHAKUMARI C.N., W/O.SATHEESAN,
ANNIKKATTU PARAMBIL VEEDU, VARAYANNUR PO.,
VARAYANNUR MURI, KOIPRAM VILLAGE,
PATHANAMTHITTA DISTRICT.

2. DHANEESH - MINOR - REPRESENTED BY
THE IST RESPONDENT - MOTHER - GUARDIAN.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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R.P. (FC) NO. 201 of 2007

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Dated, this the 2nd day of August 2007

ORDER

The revision petitioner challenges the order dated 27-01-2007 in M.C. No. 234 of 2005 of the Family Court, Thiruvalla. As per the said order, the revision petitioner who is the husband of the 2nd respondent was directed to pay maintenance at the rate of Rs. 800/- to each of the two respondents from the date of petition, namely, 18-10-2005.

2. What has been proved before the Family Court is the following:-

The marriage between the revision petitioner and the Ist respondent was solemnized on 16-8-1998. The 2nd respondent is a male child born in that wedlock. The revision petitioner was employed in Muscat in the Persian Gulf. After he came down in the year 2002, bickerings started between the spouses. They exacerbated into simmering conflicts consequent on the ill-treatment of his wife by the revision petitioner. Eventhough, at the instance of the wife, the local S.N.D.P. sakha had intervened and there had been temporary reconciliations but they did not last long. The connubial partners fell apart and started living separate since 4-10-2004. It was thereafter that the wife filed the application for maintenance for herself and her

male child. She contended that the revision petitioner was earning a monthly income of Rs. 15,000/- being engaged in sale and service of clocks and watches. The revision petitioner opposed the application contending inter-alia that the wife was unjustifiably staying away from him, that she was employed in the Pullad Co-operative Society and was able to maintain herself and that the alleged cruelty was false. On the side of the applicant wife Ext.A1 marriage certificate was marked and she also examined P.Ws. 1 to 3 of whom P.W.1 is the applicant/herself. On the side of the respondent/husband, three witnesses were examined as C.PWs 1 to 3 of whom C.P.W.1 is the husband himself. On the side of the respondent three documents were marked as Exts.D1 to D3.

3. After considering the oral and documentary evidence in the case, the learned trial Judge was inclined to hold that the wife was entitled to separate maintenance since she was justifiably staying away from the society of the husband.

4. Eventhough the revision petitioner had denied his wife's allegation that he had married again, his own witness examined as C.P.W.2 admitted from the witness box that the revision petitioner had married again. When the husband has transferred his love and affection to a stranger, the wife is justified in parting company with the husband who has no iota of love and affection left for his wife. The situation is still painful when the husband has contracted in

marriage with another woman. Hence the claim for separate maintenance by the wife is justifiable.

5. On the question of means also the Family Court has found that the employment of the wife with the Pullad Co-operative Society was only on daily wages and that too to clear the arrears of their work and she was paid only Rs. 50/- per day. From such a sporadic employment it cannot be said that she is able to maintain herself. Being the husband he has a legal and moral obligation to maintain his wife. He is an able bodied person who is a gulf returnee. While he has absolutely no disinclination to give any amount by way of maintenance to the 2nd respondent son, his disinclination to pay maintenance allowance to his wife cannot be appreciated. If he has means to maintain another woman I see no reason why he cannot maintain his lawfully wedded wife. There do not appear any good ground to interfere with the order passed by the Family Court in the rarefied jurisdiction of this Court.

This R.P. (FC) is dismissed accordingly.

V. RAMKUMAR, (JUDGE)

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